IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 102 of 1988

Date of Decision: 14-10-2004

URMILABEN JIVANBHAI MISTRI

VERSUS

PALINDRA ROAD LINES

Coram:
The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for reporting?

For the Appellants:

MR. D.R. BHATT

For the Respondents:

MS. MAYABEN DESAI

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. This Appeal is directed against the award of the Motor Accident Claims Tribunal, Valsad at Navsari in Motor Vehicles Claim Petition No. 274 of 1982 dated 07-04-1984.

2. Accident took place on 18-08-1982 at 7.20 a.m. near Madressa school in the sim of village Dambhel on

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Whether Reporters of Local Papers may be allowed to see the Judgment?

Vasma-Maroli road, when deceased was going from Maroli to Vasma on a motor cycle bearing registration No.G.R.D.4911 at a moderate speed on the correct side of road, he was hit by truck bearing registration No.G.T.O.1514 driven at excessive speed rashly and negligently coming from opposite side resulting in his death on the spot. Criminal case was lodged against the driver at Navsari Police Station. Deceased was aged 36 years old, working as building contractor and earning Rs.25,000/- to Rs.30,000/- annually. He had number of contracts for execution and could increase the work in years to come to improve his income. The claim was worked out at Rs.10,25,000/-, but restricted to Rs.4,00,000/-.

3. Opponent-1 had not filed written statement, therefore, did not contest the claim, nor appeared in the Court. Insurance Company has resisted the claim, disputed the allegations as to causing of accident, claim of being contractor and income of the deceased. It is also stated that accident was not caused by the truck driver since it was being driven at moderate speed on right side of the road; as a matter of fact, the accident was caused by the deceased who could not control his motor cycle on account of excessive speed. On these pleadings, issues were framed, evidence was considered and findings recorded are that accident took place, as alleged, due to the rash and negligent driving of the truck by its driver, resulting in the death of the deceased. Accordingly, compensation of Rs.1,00,000/- has been awarded carrying interest @ 6% per annum from the date of application till full realisation. Claimants are not satisfied with this award, therefore, it has been challenged through this Appeal.

4. Matter is considered, record perused. So far as taking place of accident is concerned, looking to the evidence, it is clear that truck driver was responsible for the accident. Finding of Claims Tribunal on this aspect is sustainable. With regard to award of compensation, we find from the evidence that the deceased was not building contractor, but a labour contractor. He had 20-30 labourers with him, therefore, employed them with the building contractor. With this background, we cannot say that he was unemployed and apply Second Schedule to Section 163A of the Motor Vehicles Act, 1988.

In any case, he was engaging labourers. Therefore, in the totality of circumstances, it would be just and proper to fix his income at Rs.2100/- per month. Deducting 1/3 towards personal expenditure, it would come to Rs.1400/- per month multiplied by 12 and multiplied by 17. This way, the compensation works out to Rs.2,85,600/-. Further, he would be entitled to Rs.5,000/- (consortium), Rs.5,000/- (loss of expectancy of life), Rs.3,000/- (loss of estate) and Rs.3,000/- (funeral expenses). Accordingly, total compensation works out to Rs.3,01,600/-.

Ms. Mayaben Desai submits that the appellants have claimed less amount than what is being awarded. May be, Court awards just compensation, and not what claimants claim, therefore, just compensation is being awarded.

5. Accordingly, the Appeal is allowed, award modified. Claimants are entitled to compensation of Rs.3,01,600/-. Rs.1,00,000/- has already been awarded by the Claims Tribunal, therefore, claimants would be entitled to a further amount of Rs.2,01,600/- with interest @ 6% per annum from the date of application till payment.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

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